


EXHIBIT A

<b>Application Number.</b> 	<b>Application/Control No.</b> 10/650,603	<b>Applicant/Patent under Review.</b> BURKETT, DAVID H. <b>Art Unit</b> 3726
<b>Document Code - AP.PRE.DEC</b>		

## Notice of Panel Decision from Pre-Appeal Brief Review



This is in response to the Pre-Appeal Brief Request for Review filed 4/27/06.

1. ☐ **Improper Request** – The Request is improper and a conference will not be held for the following reason(s):

- ☐ The Notice of Appeal has not been filed concurrent with the Pre-Appeal Brief Request.
- ☐ The request does not include reasons why a review is appropriate.
- ☐ A proposed amendment is included with the Pre-Appeal Brief request.
- ☐ Other:

The time period for filing a response continues to run from the receipt date of the Notice of Appeal or from the mail date of the last Office communication, if no Notice of Appeal has been received.

2. ☐ **Proceed to Board of Patent Appeals and Interferences** – A Pre-Appeal Brief conference has been held. The application remains under appeal because there is at least one actual issue for appeal. Applicant is required to submit an appeal brief in accordance with 37 CFR 41.37. The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable.

☐ The panel has determined the status of the claim(s) is as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.


Claim(s) withdrawn from consideration: \_\_\_\_\_.

3. ☐ **Allowable application** – A conference has been held. The rejection is withdrawn and a Notice of Allowance will be mailed. Prosecution on the merits remains closed. No further action is required by applicant at this time.

4. ☒ **Reopen Prosecution** – A conference has been held. The rejection is withdrawn and a new Office action will be mailed. No further action is required by applicant at this time.

All participants:

(1) Dave Bryant 

(2) Steve Garbe 

(3) John Hong 

(4) \_\_\_\_\_

EXHIBIT B



## UNITED STATES PATENT AND TRADEMARK OFFICE

JUN 12 2006

UNITED STATES DEPARTMENT OF COMMERCE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/650,603

08/28/2003

David H. Burkett

ACS 65356 (1747D)

8329

24201

7590

06/08/2006

FULWIDER PATTON

6060 CENTER DRIVE

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LOS ANGELES, CA 90045

EXAMINER

HONG, JOHN C

ART UNIT

PAPER NUMBER

3726

DATE MAILED: 06/08/2006

*Response Due September 8, 2006*

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/650,603

Examiner

John C. Hong

Applicant(s)

BURKETT, DAVID H.

Art Unit

3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 18, 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This is in response to the Pre-Appeal brief Request for review filed 4/27/08, the finality of the rejection of the last Office action is withdrawn.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,4-6,9,12,13 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Gambale et al. (U.S. Patent 5031636).

Gambale et al. disclose : Regarding Claims 1 and 4-6, a process for forming a guide wire for use in a medical procedure, comprising :forming a male end (36) at an extremity of a first elongated member formed of a first continuous material; forming a female end (26) at an extremity of a second elongated member, the second elongated member and the female end being formed of a second continuous material; and permanently securing (crimping; col. 7, lines 42-44) the male end of the first elongated member within the female end of the second elongated member (Fig. 2- 4); Regarding Claim(s) 9,12,13 and 18, a guide wire for use in a medical procedure, comprising: a first elongated member having an extremity and a male end formed at the extremity, the first elongated member formed of a first continuous material; a second elongated member including a second extremity, the second extremity of the second elongated member including a female end, the second elongated member and

the female end being formed of a second continuous material; wherein the male end is permanently secured (crimping; col. 7, lines 42-44) within the female end of a second elongated member (Fig. 2-4).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gambale et al. in view of Abrams et al. (U.S. Patent 5341818).

Gambale et al. teach a process for constructing a guidewire; comprising: providing an elongated proximal core portion including a distal extremity and having a male end (36) disposed at the distal extremity, the proximal core portion being formed from a first continuous material including stainless steel, providing a distal core portion including a proximal extremity and having a female end (26) with a predetermined depth disposed at the proximal extremity, the distal core portion and female end being formed from a second continuous material ; permanently securing (crimping; col. 7, lines 42-44) the male end within the female end; and disposing the flexible body member about the distal core portion (Fig. 2-4).

Gambale et al. fail to teach the distal core portion and female end being formed from a second continuous material including a nickel-titanium alloy.

Abrams et al. teach the distal core portion and female end being formed from a second continuous material including a nickel-titanium alloy (col. 4, lines 25-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilizing nickel-titanium alloy for forming the distal core portion and female end, as taught by Abrams et al. on the method of Gambale et al. so as to achieve stress-induced phase transformation.

6. Claims 2,3,7,8,10,11,14,and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gambale et al. .

Gambale et al. teach the limitation except the steps of : forming hole by electrical discharge machine; laser drilling; plunge grinding; securing by soldering, welding, and gluing.

But the steps of : forming hole by electrical discharge machine; laser drilling; plunge grinding; securing by soldering, welding, gluing are well known in the art and It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the above well known method on the process of Gambale et al. so as to manufacture more flexible guidewire.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John C. Hong whose telephone number is 571-272-4529. The examiner can normally be reached on M-F(07:00-16:30)First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on 571-272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3726

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John C. Hong  
Primary Examiner  
Art Unit 3726

jh  
May 25, 2006



**Client ID/Matter No.:** ACSG 65356 (1747D)

**Date Mailed:** September 8, 2006

**Date Due:** September 8, 2006

**Applicant:** David H. Burkett  
U.S. Utility Application

**Serial No.:** 10/650,603  
**Filing Date.:** 8/28/2003

**Title:** WIRE JOINT AND METHOD

**Documents enclosed:**

1. Transmittal (PTO/SB/21)
2. Response



The U.S. Patent and Trademark Office Mail Room stamp hereon acknowledges receipt of the items indicated above on the date shown.

JVH:st

db

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*The Expedition, November 1806, Rocky Mountains*

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**SEP 18 2006**

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**FULWIDER • PATTON LLP**

**ATTORNEYS AT LAW  
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# TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

10

Application Number

10/650,603

Filing Date

August 28, 2003

First Named Inventor

David H. Burkett

Art Unit

3726

Examiner Name

John C. Hong

Attorney Docket Number

ACSG 65356

## ENCLOSURES (Check all that apply)

☐ Fee Transmittal Form☐ Fee Attached☒ Amendment / Reply☐ After Final☐ Affidavits/declaration(s)☐ Extension of Time Request☐ Express Abandonment Request☐ Information Disclosure Statement☐ Certified Copy of Priority Document(s)☐ Response to Missing Parts/  
Incomplete Application☐ Reply to Missing Parts under  
37 CFR 1.52 or 1.53☐ Drawing(s)☐ Licensing-related Papers☐ Petition☐ Petition to Convert to a  
Provisional Application☐ Power of Attorney, Revocation  
Change of Correspondence Address☐ Terminal Disclaimer☐ Request for Refund☐ CD, Number of CD(s) \_\_\_\_\_☐ Landscape Table on CD☐ After Allowance Communication  
to TC☐ Appeal Communication to Board  
of Appeals and Interferences☐ Appeal Communication to TC  
(Appeal Notice, Brief, Reply)☐ Proprietary Information☐ Status Letter☒ Other Enclosure(s) (please  
identify below):

Postcard

Remarks

24201

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

FULWIDER PATTON LLP

Signature

Printed name

JOHN V. HANLEY

Date

September 8, 2006

Reg. No.

38,171

## CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature

Typed or printed name

JOHN V. HANLEY

Date

September 8, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on September 8, 2006.

  
John V. Hanley, Registration No. 28,171

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/650,603  
Applicant : David H. Burkett  
Filed : August 28, 2003  
Title : WIRE JOINT AND METHOD  
Art Unit : 3726  
Examiner : John C. Hong  
  
Docket No.: : ACSG-65356 (1747D)  
Customer No. : 24201

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE

Dear Sir:

This paper is responsive to the Office action dated June 8, 2006.

AMENDMENTS TO THE CLAIMS:

The below listing of claims will replace all prior versions and listings of claims in the application:

LISTING OF CLAIMS:

1. (Previously presented): A process for forming a guide wire for use in a medical procedure, comprising:

forming a male end at an extremity of a first elongated member formed of a first continuous material;

forming a female end at an extremity of a second elongated member, the second elongated member and the female end being formed of a second continuous material; and

permanently securing the male end of the first elongated member within the female end of the second elongated member.

2. (Original): The process of claim 1 wherein formation of the female end comprises forming a hole by electrical discharge machining.

3. (Original): The process of claim 1 wherein formation of the female end comprises forming a hole by laser drilling.

4. (Original): The process of claim 1 wherein the first continuous material is different from the second continuous material.

5. (Original): The process of claim 1 wherein the first and second continuous materials comprise a biocompatible material selected from the group consisting of metals, polymers and composites.

6. (Original): The process of claim 5 wherein the group consists of stainless steel and Nitinol.

7. (Original): The process of claim 1 wherein securing the male end to the female end is selected from the group consisting of soldering, welding and gluing.

8. (Original): The process of claim 1 wherein forming the male end comprises plunge grinding.

9. (Previously presented): A guide wire for use in a medical procedure, comprising:

a first elongated member having an extremity and a male end formed at the extremity, the first elongated member formed of a first continuous material;

a second elongated member including a second extremity, the second extremity of the second elongated member including a female end, the second elongated member and the female end being formed of a second continuous material;

wherein the male end is permanently secured within the female end of a second elongated member.

10. (Previously presented): The guide wire of claim 9 wherein the female end is formed by electrical discharge machining.

11. (Previously presented): The guide wire of claim 9 wherein the female end is formed by laser drilling.

12. (Previously presented): The guide wire of claim 9 wherein the first and second continuous materials comprise biocompatible materials selected from the group consisting of metals, polymers and composites.

13. (Previously presented): The guide wire of claim 12 wherein the group consists of stainless steel and Nitinol.

14. (Previously presented): The guide wire of claim 9 wherein the male end is secured to the female end by a bond selected from the group consisting of solder, weld and glue.

15. (Previously presented): The guide wire of claim 9 wherein the male end is formed by plunge grinding.

16 – 17 (Canceled)

18. (Previously presented): A guidewire, comprising:  
an elongated proximal core portion having a female end disposed at the distal extremity, the proximal core portion and female end formed from a first continuous material;

a distal core portion having a male end disposed at the proximal extremity; and  
a flexible body member;

wherein the male end is permanently secured within the female end and the flexible body member is disposed about and secured to the distal core portion.

19. (Previously presented): A process for constructing a guidewire;  
comprising:

providing an elongated proximal core portion including a distal extremity and having a male end disposed at the distal extremity, the proximal core portion being formed from a first continuous material including stainless steel;

providing a distal core portion including a proximal extremity and having a female end with a predetermined depth disposed at the proximal extremity, the distal core portion and female end being formed from a second continuous material including a nickel-titanium alloy;

permanently securing the male end within the female end; and

disposing the flexible body member about the distal core portion.

## REMARKS

The June 8, 2006 Office action stated that it was responsive to the Pre-Appeal Brief filed by the Applicants on April 25, 2006. Significantly, in the Pre-Appeal Brief, the Applicants argued that the rejection of claims 1, 4-6, 9, 12, 13, 18 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Abrams et al. (5,341,818) in view of Gambale et al. (5,031,636) was not sufficient to establish a *prima facie* case of obviousness. Moreover, the Applicants argued that the rejection of claims 2, 3, 7, 8, 10, 11, 14 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Abrams et al./Gambale et al. was also insufficient to establish a *prima facie* case of obviousness. In support of the Applicant's position, it was argued that there was no motivation to combine the teachings of Abram et al. and Gambale et al. and even if there was sufficient motivation, the cited art did not meet the "permanently" secured/securing limitation recited in each of the pending claims.

In the outstanding Office action, the Examiner again relies upon the Abrams et al. and Gambale et al. references to reject the claims. That is, in the outstanding Office action, claims 1, 4-6, 9, 12, 13 and 18 have been rejected under § 102(b) in view of Gambale et al.; claim 19 was rejected under § 103(a) in view of Gambale et al. and Abrams et al.; and claims 2, 3, 7, 8, 10, 11, 14 and 15 were rejected under § 103(a) in view of Gambale et al. Accordingly, in view of the use of the same art to reject the pending claims as that which was overcome by the Applicant's Pre-Appeal Brief, the Applicants respectfully request that the June 8, 2006 Office action be withdrawn.

It is respectfully submitted that the Gambale et al. reference does not teach each and every limitation recited in claims 1, 4-6, 9, 12, 13 and 18 as is required under § 102(b). Clearly, Gambale et al. does not teach permanently securing the male end of the first elongate member within the female end of the second elongate member as is required by method claim 1 and its dependent claims 2-8. Further, Gambale et al. does not teach a male end which is permanently secured within a female end as is recited in

claims 9-15 and 18. In fact, Gambale et al. teaches that "the connection maybe broken easily and quickly should it be desired to separate the guide wire extension 24 from the guide wire 12" (See Column 7, line 23 et seq.). Notably, the section of Gambale et al. upon which the Examiner has relied (Column 7, lines 42-44) does not actually address permanently securing a male end (36) within a female end (26). Therefore, it is respectfully submitted that each of pending independent claims 1, 9 and 18 as well as their respective dependent claims recite subject matter which is allowable over the Gambale et al. reference.

Specifically with regard to the rejection of independent claim 19 under 35 U.S.C. § 103(a) as being unpatentable over Gambale et al. in view of Abrams et al., it is again respectfully submitted that there is no motivation to combine the teachings of Gambale et al. and Abrams et al. As previously stated, "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." Also, the MPEP advises that "a statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the invention was made' because references relied upon teach all of the aspects of the claimed invention or individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references." Moreover, the MPEP states that "the level of skill in the art can not be relied upon to provide the suggestion to combine the references."

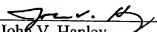
In the present situation, it is respectfully submitted that an objective reason has not been presented to modify Gambale et al. in view of Abrams et al. In the outstanding Office action, the Examiner states that it would have been obvious to one of ordinary skill in the art to modify Gambale et al. with the teachings of Abrams et al. "so as to achieve stress-induced phase transformation." However, since Gambale et al. is not concerned with achieving "stress-induced phase transformation," there is no suggestion or

motivation in Gambale et al. to modify its teachings as suggested by the Examiner. Moreover, Column 4, lines 25-30 of Abrams et al. upon which the Examiner relies as a teaching of a "distal core portion and female end being formed from a second continuous material including a nickel-titanium alloy" does not actually address the recitation in claim 19 of a "distal core portion and female end being formed from a second continuous material." Rather, Abrams et al. describes connector element 13 which is a separate and distinct structure from that of distal portion 12 of the guide wire. Therefore, it is respectfully submitted that claim 19 also defines patentable subject matter.

#### CONCLUSION

Applicants have attempted to completely respond to the rejections set forth in the outstanding Office action. In view of the above amendments and remarks, Applicant respectfully request that the application be reconsidered, the claims allowed and the application passed to issue.

Respectfully submitted,  
FULWIDER PATTON LLP

By:   
John V. Hanley  
Registration No. 38,171

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138921.1





## UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,603	08/28/2003	David H. Burkett	ACS 65356 (1747D)	8329
24201	7590	11/27/2006		
FULWIDER PATTON 6060 CENTER DRIVE 10TH FLOOR LOS ANGELES, CA 90045		FULWIDER • PATTON LLP LOS ANGELES	EXAMINER HONG, JOHN C	
		NOV 29 2006	ART UNIT 3726	
		RECEIVED BY DOCKET DEPT.	PAPER NUMBER	

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## FINAL REJECTION

2 - MONTH RESPONSE DUE: Jan. 27, 20073 - MONTH RESPONSE DUE: Feb. 27, 2007

NOTICE OF APPEAL DUE:

(6-MONTH PERIOD ENDS) May 27, 2007

## Office Action Summary

**Application No.**

10/650,603

**Applicant(s)**

BURKETT, DAVID H.

**Examiner**

JOHN C. HONG

**Art Unit**

3726

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 18, 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1,4-6,9,12,13 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Gambale et al. (U.S. Patent 5031636).**

Gambale et al. disclose : **Regarding Claims 1 and 4-6**, a process for forming a guide wire for use in a medical procedure, comprising :forming a male end (36) at an extremity of a first elongated member formed of a first continuous material; forming a female end (26) at an extremity of a second elongated member, the second elongated member and the female end being formed of a second continuous material; and permanently securing (crimping; col. 7, lines 42-44) the male end of the first elongated member within the female end of the second elongated member (Fig. 2- 4);and **Regarding Claim(s) 9,12,13 and 18**, a guide wire for use in a medical procedure, comprising: a first elongated member having an extremity and a male end (36) formed at the extremity, the first elongated member formed of a first continuous material; a second elongated member including a second extremity, the second extremity of the second elongated member including a female end (26), the second elongated member and the female end being formed of a second continuous material; wherein the male end is permanently secured (crimping; col. 7, lines 42-44) within the female end of a second elongated member (Fig. 2-4).

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**NOTE:** Col. 7, lines 42-44 describes the guide wire **12** and extension wire **24** are **crimped** and the crimped connection maybe broken easily (col.7, lines 23-26) since the **connection is made permanently secured.**

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gambale et al. in view of Abrams et al. (U.S. Patent 5341818).**

Gambale et al. teach a process for constructing a guidewire; comprising: providing an elongated proximal core portion including a distal extremity and having a male end (36) disposed at the distal extremity, the proximal core portion being formed from a first continuous material including stainless steel, providing a distal core portion including a proximal extremity and having a female end (26) with a predetermined depth disposed at the proximal extremity, the distal core portion and female end being formed from a second continuous material ; permanently securing (crimping; col. 7, lines 42-44) the male end within the female end; and disposing the flexible body member about the distal core portion (Fig. 2-4).

Gambale et al. fail to teach the distal core portion and female end being formed from a second continuous material including a nickel-titanium alloy.

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Abrams et al. teach the distal core portion and female end being formed from a second continuous material including a nickel-titanium alloy (col. 4, lines 25-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilizing nickel-titanium alloy for forming the distal core portion and female end, as taught by Abrams et al. on the method of Gambale et al. so as to achieve stress-induced phase transformation.

**NOTE:** The rationale to modify or combine the prior art **does not have to be** expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (setting forth test for implicit teachings); In re Eli Lilly & Co., 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); In re Nilssen, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); Ex parte Clapp, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985) (examiner must present convincing line of reasoning supporting rejection); and Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning).

**5. Claims 2,3,7,8,10,11,14,and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gambale et al. .**

Gambale et al. teach the limitation except the steps of : forming hole by electrical discharge machine; laser drilling; plunge grinding; securing by soldering, welding, and gluing.

But the steps of : forming hole by electrical discharge machine; laser drilling; plunge grinding; securing by soldering, welding, gluing are well known in the art and it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the

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above well known method on the process of Gambale et al. so as to manufacture more flexible guidewire.

*Response to Arguments*

1. Applicant's arguments filed 9/12/06 have been fully considered but they are not persuasive. See the new Office action.

Regarding applicant's arguments :

(A) That the Gambale et al. does not teach permanently securing the male end and the female end. But Gambale et al. clearly teach the connection is crimped (col.7, lines 42-44) which is permanently secure so the connection maybe easily broken. Gambale et al. further describes in col. 7, lines 11-14, 'It has been found that a connection can be made quickly and easily. It maintains sufficient tensile strength of the order of about one or two pounds force so as not to come apart during use.'

(B) Objective reason has not been presented to modify Gambale et al. in view of Abrams et al. . Gambale et al. is not concerned with achieving "stress-induced phase transformation"

But the rationale to modify or combine the prior art **does not have to be** expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (setting forth test for implicit teachings); In re Eli Lilly & Co., 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); In re Nilssen, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); Ex parte Clapp, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985) (examiner must present convincing line of reasoning supporting rejection); and Ex parte Levensgood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning).

(C) Abrams et al. does not teach the distal core portion and female end being formed from a second continuous material. But the Abrams et al. teach the utilizing superelastic material such as Ni-Ti type alloys on the portions of guiding members (col.4, lines 25-30; col. 4, lines 54-58), and this teaching is well known in the art.

***Conclusion***

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN C. HONG whose telephone number is 571-272-4529. The examiner can normally be reached on HPH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DAVID BRYANT can be reached on 571-272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JOHN C HONG  
Primary Examiner  
Art Unit 3726

Jh  
November 18, 2006



## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	1547132
<b>Application Number:</b>	10650603
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	8329
<b>Title of Invention:</b>	Wire joint and method
<b>First Named Inventor/Applicant Name:</b>	David H. Burkett
<b>Customer Number:</b>	24201
<b>Filer:</b>	John Vincent Hanley/Kerry Tuszyński
<b>Filer Authorized By:</b>	John Vincent Hanley
<b>Attorney Docket Number:</b>	ACS 65356 (1747D)
<b>Receipt Date:</b>	27-FEB-2007
<b>Filing Date:</b>	28-AUG-2003
<b>Time Stamp:</b>	12:51:07
<b>Application Type:</b>	Utility

### Payment information:

Submitted with Payment	yes
Payment was successfully received in RAM	\$500
RAM confirmation Number	1866
Deposit Account	

### File Listing:

Document Number	Document Description	File Name	File Size(Bytes)	Multi Part /zip	Pages (if appl.)
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1	Notice of Appeal Filed	ACSG65356_NoticeofAppeal.pdf	36805	no	1
<b>Warnings:</b>					
<b>Information:</b>					
2	Fee Worksheet (PTO-06)	fee-info.pdf	8134	no	2
<b>Warnings:</b>					
<b>Information:</b>					
Total Files Size (in bytes):			44939		
<p>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</p> <p><b><u>New Applications Under 35 U.S.C. 111</u></b>          If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</p> <p><b><u>National Stage of an International Application under 35 U.S.C. 371</u></b>          If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</p> <p><b><u>New International Application Filed with the USPTO as a Receiving Office</u></b>          If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</p>					

**Acknowledgement Receipt**

The USPTO has received your submission at **12:51:07** Eastern Time on **27-FEB-2007**.

\$ **500** fee paid by e-Filer via *RAM* with Confirmation Number: 1866.

**eFiled Application Information**

EFS ID	1547132
Application Number	10650603
Confirmation Number	8329
Title	Wire joint and method
First Named Inventor	David H. Burkett
Customer Number or Correspondence Address	24201
Filed By	John Vincent Hanley/Kerry Tuszynski
Attorney Docket Number	ACS 65356 (1747D)
Filing Date	28-AUG-2003
Receipt Date	27-FEB-2007
Application Type	Utility

**Application Details**

Submitted Files	Page Count	Document Description	File Size	Warnings
ACSG65356_NoticeofAppeal.pdf	1	Notice of Appeal Filed	36805 bytes	◆ PASS
fee-Info.pdf	2	Fee Worksheet (PTO-06)	8134 bytes	◆ PASS

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

**New Applications Under 35 U.S.C. 111**

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53 (b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

**National Stage of an International Application under 35 U.S.C. 371**

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

*If you need help:*

- Call the Patent Electronic Business Center at (866) 217-9197 (toll free) or e-mail [EBC@uspto.gov](mailto:EBC@uspto.gov) for specific questions about Patent e-Filing.
- Send general questions about USPTO programs to the [USPTO Contact Center \(UCC\)](#).
- If you experience technical difficulties or problems with this application, please report them via e-mail to [Electronic Business Support](#) or call 1 800-786-9199.

## Electronic Patent Application Fee Transmittal

<b>Application Number:</b>	10650603			
<b>Filing Date:</b>	28-Aug-2003			
<b>Title of Invention:</b>	Wire joint and method			
<b>First Named Inventor/Applicant Name:</b>	David H. Burkett			
<b>Filer:</b>	John Vincent Hanley/Kerry Tuszynski			
<b>Attorney Docket Number:</b>	ACS 65356 (1747D)			
Filed as Large Entity				
<b>Utility      Filing Fees</b>				
<b>Description</b>	<b>Fee Code</b>	<b>Quantity</b>	<b>Amount</b>	<b>Sub-Total in USD(\$)</b>
<b>Basic Filing:</b>				
<b>Pages:</b>				
<b>Claims:</b>				
<b>Miscellaneous-Filing:</b>				
<b>Petition:</b>				
<b>Patent-Appeals-and-Interference:</b>				
Notice of appeal	1401	1	500	500
<b>Post-Allowance-and-Post-Issuance:</b>				
<b>Extension-of-Time:</b>				

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Miscellaneous:				
Total in USD (\$)				500

**NOTICE OF APPEAL FROM THE PRIMARY EXAMINER TO  
THE BOARD OF PATENT APPEALS AND INTERFERENCES (Large Entity)**

Docket No.  
**ACSG 65356**

In Re Application Of: **David H. Burkett**

Application No. <b>10/650,603</b>	Filing Date <b>8/28/2003</b>	Examiner <b>John C. Hong</b>	Customer No. <b>24201</b>	Group Art Unit <b>3726</b>	Confirmation No. <b>8329</b>
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Invention: **WIRE JOINT AND METHOD**

**COMMISSIONER FOR PATENTS:**

Applicant(s) hereby appeal(s) to the Board of Patent Appeals and Interferences from the decision of the Primary Examiner dated **11/27/2006** finally rejecting Claim(s) **1-15, 18 and 19**

The fee for this Notice of Appeal is: **\$500.00**

- ☐ A check in the amount of the fee is enclosed.
- ☒ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. **06-2425**
- ☒ Payment by credit card. Form PTO-2038 is attached.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

/John V. Hanley/

*Signature*

Dated: **February 27, 2007**

**John V. Hanley**  
**FULWIDER PATTON LLP**  
**Howard Hughes Center**  
**6060 Center Drive, Tenth Floor**  
**Los Angeles, CA 90045**  
**(310) 824-5555**  
**(310) 824-9696 facsimile**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on

(Date)

*Signature of Person Mailing Correspondence*

*Typed or Printed Name of Person Mailing Correspondence*

CC:





## UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,603	08/28/2003	David H. Burkett	ACS 65356 (1747D)	8329
24201	7590	11/05/2007		
FULWIDER PATTON LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE, TENTH FLOOR LOS ANGELES, CA 90045			EXAMINER HONG, JOHN C	
			ART UNIT 3726	PAPER NUMBER
			MAIL DATE 11/05/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Notice of Abandonment

Application No.

10/650,603

Examiner

JOHN C. HONG

Applicant(s)

BURKETT, DAVID H.

Art Unit

3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 27 February 2007.

- (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
- (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
- (d) ☒ No reply has been received.

2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

- (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
- (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
- (c) ☐ The issue fee and publication fee, if applicable, has not been received.

3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).

- (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
- (b) ☐ No corrected drawings have been received.

4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. ☐ The reason(s) below:

  
JOHN C. HONG  
Primary Examiner  
Art Unit: 3726

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.